

# CHAPTER 1

## INTRODUCTION

### Background

1.1 On 29 March 2007, the Senate referred the provisions of the Native Title Amendment (Technical Amendments) Bill 2007 (the Bill) to the Senate Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 8 May 2007.

1.2 The Bill amends the *Native Title Act 1993*, and will implement reforms to certain aspects of the native title system. The proposed reforms were originally announced in September 2005 by the Attorney-General. The Attorney-General identified six connected elements of reform:

- an independent review of native title claims resolution processes;<sup>1</sup>
- technical amendments to the Native Title Act;
- consultation on measures to encourage the effective functioning of Prescribed Bodies Corporate (PBCs);
- reform of the native title non-claimant (respondents) financial assistance program to encourage agreement-making rather than litigation;
- measures to improve the effectiveness of Native Title Representative Bodies (NTRBs); and
- increased dialogue and consultation with state and territory governments to encourage more transparent practices in the resolution of native title.<sup>2</sup>

1.3 The first tranche of legislation to implement the reforms identified by the Attorney-General — the Native Title Amendment Bill 2006 — was passed, with amendments, by the parliament on 28 March 2007.<sup>3</sup> This legislation was also referred to the Senate Legal and Constitutional Affairs Committee for inquiry. The report of the committee on the first tranche of legislation was presented on 23 February 2007.<sup>4</sup>

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1 This review was undertaken by Mr Graham Hiley QC and Dr Ken Levy; their report was released on 31 March 2006: Graham Hiley QC and Dr Ken Levy, *Native Title Claims Resolution Review*, Commonwealth of Australia, March 2006 (the Claims Resolution Review).

2 Attorney-General's Department, *Native Title Reform*, 5 December 2006, <http://www.ag.gov.au/nativetitlesystemreform>, (accessed 3 April 2007).

3 See *Senate Hansard*, 26 March 2007, pp 1-13; 47-50.

4 This report can be found at the Department of the Senate website [http://www.aph.gov.au/Senate/committee/legcon\\_ctte/mig\\_review\\_provisions/index.htm](http://www.aph.gov.au/Senate/committee/legcon_ctte/mig_review_provisions/index.htm)

## **Purpose of the Bill**

1.4 The Bill proposes a large number of technical and minor amendments to the Native Title Act, and contains over 40 different measures.<sup>5</sup> The Bill focuses on changes to the Native Title Act in the following areas:

- technical amendments to the Native Title Act to change some of the existing processes, and add new processes, for native title litigation and negotiation;
- measures to alter provisions relating to representative Aboriginal and Torres Strait Islander bodies (representative bodies), including the removal of some corporate governance obligations and changing the process for reviewing decisions of representative bodies;
- measures to improve the functioning of PBCs, including the introduction of the ability to charge third-parties fees for costs associated with negotiations; and
- changes to the Native Title Act consequential to the operation of the *Legislative Instruments Act 2003*.<sup>6</sup>

## **Conduct of the inquiry**

1.5 The committee advertised the inquiry in *The Australian* newspaper on 4 April, 18 April and 2 May 2007. Submissions were invited by 20 April 2007. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to over 60 organisations and individuals.

1.6 The committee received 12 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public. The committee held a public hearing in Adelaide on 2 May 2007.

## **Acknowledgment**

1.7 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

## **Note of references**

1.8 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

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5 The Hon Mr Philip Ruddock MP, Attorney-General, *House of Representatives Hansard*, 29 March 2007, p. 1.

6 Explanatory Memorandum (EM), p. 3.